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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
UPPER PENINSULA DISTRICT OFFICE



C. HEIDI GRETHUR  
DIRECTOR

August 26, 2016

Aquila Resources, Inc.  
E 807 Gerue Street  
Stephenson, Michigan 49887

File Number: 2B5-QHB6-CZE8  
County: Menominee  
Project Name: The Back Forty Project

Dear Applicant:

**SUBJECT: Clarification and Amplification Required/ Federal Objection to Issuance of 404 Permit**

The Michigan Department of Environmental Quality's (MDEQ), Water Resources Division (WRD), has received and reviewed the information provided in your revised application and supplemental materials submitted in response to a request for clarification and amplification of your Joint Permit Application and inconsistencies identified during the May 18, 2016 site inspection with MDEQ, US Environmental Protection Agency (EPA), Department of Natural Resources (MDNR), and Foth representatives. The revised application was received on August 9, 2016.

During the site inspection, MDEQ and EPA identified additional regulated resources on the project site and within the proposed impact area that were not included as part of the Joint Permit Application. Prior to the site inspection, the application had been determined to be administratively complete and a public notice had been published. Because the additional regulated resource impacts increase the scope of the project, a revised application was requested and an additional public notice will be required.

MDEQ discussed the inconsistencies observed at the project site with Foth representatives and had a follow-up conference call on July 7, 2016 in which information required to re-public notice the application was discussed. Information received in response to this discussion has been reviewed and additional clarification and amplification is required. Additionally, MDEQ received a letter dated August 25, 2016 from the EPA with comments to the public notice. The letter detailed a federal objection to the issuance of a permit under Part 404 of the Clean Water Act. The applicant has 90 days from the date of that letter to address the objections.

To facilitate a coordinated response and reduce duplicated information, the MDEQ has coordinated with the EPA to prepare a list of information required to clarify and amplify the revised Joint Permit Application and to address the federal objections. The following information is required:

Finalized site plan

- Include the maximum foreseeable impacts of infrastructure construction and operation through the life of the mine.
- Include the revised shapefile for WL-2C from the October 2, 2015 revised wetland delineation on all project plans.
- Show all streams in the project area and vicinity, including streams off the project site but within the affected watersheds.
  - Include the delineation information and figures showing the location of the stream identified in WL-B1.
- Provide detailed site plans of the August 2016 revised impact areas.

- Plans should include the location of resources and the revised infrastructure development.
- Include all updated shapefiles from the most recent wetland delineation conducted.
- All measurements should be in feet.

#### River Road Reroute

- Provide a plan for the reroute of River Road that includes where the road will terminate and the proposed new route.
  - Include water resource impacts, alternatives, and mitigation analysis should any resource impacts result from the bypass.
  - Provide information on any additional infrastructure needed for operations or to reroute existing utilities or infrastructure around the project site.

#### OR

- If River Road is scheduled to terminate at the project site:
  - Provide a letter of acknowledgement from the Menominee County Road Commission that they are aware of the intent to discontinue the use of River Road for the life of the mine.
  - Provide a letter of acknowledgement for applicable utility companies that they are aware that utility lines and associated infrastructure will have to be removed from the River Road route within the project area for the life of the mine.
    - Include information on if/ where utilities we will be relocated.
  - Include a project figure that shows where River Road will terminate

#### AND

- Provide detailed information if any portions of River Road will need to be upgraded to support mine traffic.
  - Include figures that show the locations of any required upgrades and aquatic resources that will be impacted.

#### Streams and Wetlands

- Provide a comprehensive aquatic resource impacts assessment that identifies all regulated wetlands and streams on-site and off-site within the potential impact area.
  - Include information on the effects of mine operation and pit dewatering on the resource.

#### Pit Dewatering Impacts/ Groundwater Drawdown

- Provide analysis on the direct and indirect impacts to wetlands within the affected watersheds as a result of pit dewatering.
- Provide analysis on direct and indirect impacts to streams within the affected watersheds as a result of pit dewatering.
- Modeling indicates groundwater drawdown exceeding 0.5 ft in areas with regulated wetlands and streams. Analysis provided in the revised application determines the drawdown to be “negligible” in impact. Provide additional clarification on “negligible” impact. Provide significant detail on the determination that these resources will not be impacted by the proposed activities and why these impacts have not been applied for as part of the proposed project. Provide additional justification on how impacts to these resources will be avoided.
- Provide sufficient rationale for the proposed watershed thresholds in Appendix E.

#### Alternatives Analysis

- Provide an alternative analysis that avoids and minimizes all direct, indirect, and cumulative aquatic resource impacts to the maximum extent practicable. Include discussion on all alternatives explored including information on:
  - How indirect impacts are avoided and minimized.
  - Proposed changes to watersheds and stream flow and how direct and indirect impacts have been avoided and minimized.

#### Wetland Mitigation Plan

- Provide a wetland mitigation plan that provides sufficient in-kind compensation for wetland and stream impacts; and meets the requirements of the Federal Mitigation Rule.
  - The mitigation plan should include detailed information and figures on the proposed wetland and stream restoration.
  - The mitigation plan should include information on a third party managing steward, financial assurance, long term monitoring and management.

#### Stormwater Impacts

- Provide a description of stormwater controls. Include methods that would minimize stormwater impacts to aquatic resources, identify wetlands that may be impacted, and how impacts may be minimized.
- Specifically address the location of a culvert between stormwater containment and WL-2b. Is WL-2b being used as an emergency overflow?

#### Invasive Species Management

- Follow Michigan's established equipment washing procedures to minimize the spread of invasive species.

#### Surface water quality

- Provide information on surface water quality monitoring that has taken place and monitoring locations.
- Provide existing baseline surface water quality data at locations near the proposed project area.
- Provide information on any proposed discharge of surface and stormwater to wetlands or streams.

#### Cultural Resources/ SHPO

- Provide information on any communication and coordination that the applicant with the State Historical Preservation Office regarding cultural resources within the project vicinity.
- Provide information on any communication and coordination that the applicant has had with Tribal agencies regarding cultural resources within the project vicinity.

#### Mussel Impacts

- Provide information on mussel surveys completed and analysis of potential impacts.
- Provide a relocation plan for mussel species.

#### Monitoring plan

- Clarify and detail the water resources monitoring plan to include specific impact thresholds, adaptive management techniques, and mitigation measures.
- The monitoring plan should also address alternative measures to avoid water resource impacts.
- Provide detailed clarification on how the project will maintain regulatory compliance throughout the life of the mine.

#### Property Owner Authorization

- Provide authorization for impacts proposed on property not under control of the applicant.

Additional information may be required upon further review of your application. Should we not receive the requested information from you within 30 days of this letter, we will consider your application as withdrawn, and we will close your file. Fees are not refundable on files once a decision has been made or if an action has been taken, such as closing a file due to no or incomplete response to a correction request letter, posting a public notice, or conducting a site visit. A new application may be submitted, but fees are not transferable.

If you have any questions regarding this letter or your application, please contact me at 906-250-6176 or pennalav@michigan.gov. Send the requested information to: MDEQ, WRD, Upper Peninsula District Office, 1504 W Washington Street, Marquette, Michigan 49855. Please include your file number 2B5-QHB6-CZE8, in your response. The status of your file can be tracked online at: <https://miwaters.deq.state.mi.us>.

Sincerely,

Ginny Pennala, District Supervisor  
Water Resources Division, Resource Unit

cc: Foth Companies, Steve Donahue  
USEPA, Melanie Burdick  
MDEQ, Kristi Wilson  
MDEQ, Joe Maki  
MDEQ, Melanie Humphrey  
MDEQ, Steve Casey